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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Revision of Part 22 of the ) CC Docket No. 92-115  
Commission's Rules Governing the )  
Public Mobile Services )

To: The Commission.

COMMENTS OF METROCALL, INC.

Metrocall, Inc. ("Metrocall"), through its undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Commission in the above-referenced proceeding.<sup>1</sup>

I. Statement of Interest.

Metrocall has long been authorized to provide RCC paging services pursuant to Part 22 of the Commission's Rules. Metrocall currently provides wide-area paging services to over 260,000 subscribers at various locations throughout the United States, and continues to expand its RCC paging services in order to meet the growing public demand for rapid, efficient, and reasonably-priced one-way signalling services.

Metrocall currently holds licenses for over 100 base station transmitters operating on frequencies in the 931 MHz band, and has pending applications for approximately many more such stations. The rule changes proposed in the FCC's Further Notice

<sup>1</sup> Further Notice of Proposed Rule Making in CC Docket No. 92-115, FCC 94-102 (released May 20, 1994).

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concerning 931 MHz services are likely to have an immediate impact on Metrocall's paging business. Moreover, due to its practical experience in this field, Metrocall is well-qualified to comment on the advantages and disadvantages of the proposed rule changes. Thus, Metrocall has standing as a party in interest to file formal comments in this proceeding.

## II. Summary of Proceeding.

By a Notice of Proposed Rule Making released on June 12, 1992, the Commission proposed comprehensive revisions to Part 22 of its Rules. See Notice of Proposed Rule Making in CC Docket No. 92-115, 7 FCC Rcd. 3658 (1992) (the "Notice"). During the pendency of this proceeding, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), which amended Sections 3(n) and 332 of the Communications Act of 1934 (the "Act") to create a comprehensive new regulatory framework for all mobile services.

The Further Notice in this proceeding noted the Commission's progress in implementing the amended Sections 3(n) and 332 of the Act. See Further Notice at ¶ 3. Concurrently with the adoption of the Further Notice, the Commission initiated the comment period for its proposed Rules to conform the technical, operational and licensing requirements for common carrier and private mobile services classified as "commercial mobile radio services" pursuant to the Budget Act. See Further Notice of Proposed Rule Making in GN Docket 93-252, FCC 94-100 (released May 20, 1994). The Commission stated its belief that the

proposal for additional revisions to Part 22 could be incorporated into the new regulatory framework it is developing for CMRS, and that the changes proposed in the Notice and Further Notice would further streamline and improve processing for mobile services. Further Notice at ¶ 4.

Among the changes proposed in the Further Notice are: (1) requiring all 931 MHz paging applicants to specify the frequency sought; (2) adopting a definition of "initial applications" for 931 MHz services, for purposes of competitive bidding; and (3) the use of "first come, first served" processing procedures for 931 MHz modifications.

**III. The Proposed Rule Changes Should Not Affect Processing of Pending 931 MHz Applications.**

The Further Notice proposes to require all applicants for 931 MHz paging frequencies to specify the frequencies for which they seek authorization. See Further Notice at ¶ 16. To implement this rule change the Commission proposes to allow pending applicants a 60-day period within which to amend their applications to specify the precise frequency sought; applicants who have stated a "preference" for a particular frequency will also be required to amend to state definitely the frequency they seek. Id. at ¶ 17. Those applications will be placed on public notice and subject to petitions to deny and the filing of mutually exclusive applications. See id.

The procedure outlined in the Further Notice appears to apply only to those 931 MHz applications that do not specifically request a particular frequency, although the language used is not

entirely clear. The Further Notice does not indicate whether licensees and applicants that have already specified a frequency in their now pending applications will be considered to have merely stated a "preference" for that frequency.

Metrocall respectfully submits that those pending applications that indicate a particular 931 MHz frequency, should continue to be processed according to existing procedures during the pendency of this proceeding. Those applications should not be deemed to merely state a "preference" and considered as part of the "processing group" of applications requiring amendment. In most cases, a particular frequency has been selected because the applicant is already licensed to operate on that frequency in other locations.

The continued processing of 931 MHz applications that specify a particular frequency would not prejudice potential applicants; potential applicants for those frequencies are already given adequate opportunity to file competing proposals under the current public notice procedures. Moreover, by continuing to process and grant those 931 MHz applications already specifying the requested frequency, the Commission will further its stated goal of "eliminat[ing] the backlog in pending 931 MHz applications", id. at ¶ 17; and will ensure that service to the public is not delayed by the pendency of this proceeding.

#### IV. Definition of "Initial Applications".

The Further Notice observes that, pursuant to the Budget Act, the Commission may utilize competitive bidding procedures to

select among mutually exclusive applications for initial licenses, and that applications to modify existing facilities are generally not subject to competitive bidding. See Further Notice at ¶ 18. The Commission previously stated, however, that it may treat certain modifications as "initial" applications, and the Further Notice proposes several instances in which a 931 MHz application will be treated as an "initial" application for purposes of competitive bidding. Id.

Specifically, the Further Notice proposed that the following would be considered "initial" applications: (1) an application anywhere on a new frequency, and (2) a proposal to operate a new facility more than two kilometers (1.6 miles) from an existing facility on the same frequency. Id. Additionally, by limiting the definition of what would qualify as a "modification" for 931 MHz facilities, the Commission included relocations of stations by more than 1.6 miles and any technical changes increasing a station's service contour as "initial" applications. See Id.

Metrocall respectfully submits that the Commission's proposal defines "modifications" for 931 MHz paging systems far too narrowly. Under the Commission's proposed 1.6 mile limit for additional facilities and site relocations, along with its classification of even de minimis extensions of service areas as "initial" applications, very few modifications to existing 931 MHz systems would be exempt from the possibility of competitive bidding. This proposal will severely hinder the growth and improvement of existing paging systems, while causing enormous

delays in the processing of relatively minor system modifications.

For example, the relocation of one transmitter in a wide-area system by several miles, or the addition of a new transmitter to such a system, may not substantially increase the existing service area of the licensee; yet, there may be legitimate business reasons for making such modifications (such as the loss of a transmitter site). By focusing on the location of the proposed transmitter site in relation to existing transmitter sites, rather than on the substantiality of the effect of certain modifications on a licensee's service area, the Commission's proposal may have the undesirable, and presumably unintentional result of delaying and increasing the cost of modifications that are necessary to improve existing paging services or prevent disruptions in service.

As another example, the Further Notice does not explain how so-called "fill-in" transmitters will be treated under the Commission's proposal. Since such additional base station transmitters do not extend a licensee's existing service and interference contours,<sup>2</sup> they should be within the Commission's proposed definition of a permissible "modification." See Further Notice at ¶ 18. Under both the current Rules and the proposed Rules, the addition of "fill-in" paging transmitters is a permissive, minor modification; the licensee need not seek prior

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<sup>2</sup> See 47 C.F.R. § 22.117(b)(11); and see Notice at Appendix B (proposed § 22.165).

authority to construct such a transmitter. See 47 C.F.R. § 22.117(b); and see Notice at Appendix B (proposed § 22.165). It is unclear from the Further Notice, however, whether a 931 MHz "fill-in" transmitter located more than 1.6 miles from the licensee's existing base stations would be treated as an "initial" application, subject to the full application and public notice requirements of the Rules. Such a result would hardly accomplish the Commission's stated goal of "streamlining" the processing of Part 22 applications. See Further Notice at ¶ 2.

The Commission has already interpreted the Budget Act to generally preclude the use of auctions for mutually exclusive modification applications. See Second Report and Order in PP Docket No. 93-253, FCC 94-61, at ¶ 39 (released April 20, 1994) ("Second Auction Order") ("competitive bidding is not permitted 'in the case of a ... modification of the license'"). In holding that some cases may require a modification application to be treated as an "initial" application, the FCC was influenced by certain commenters' concerns regarding "modifications so major as to dwarf the licensee's currently authorized facilities." Id. at ¶¶ 37-38.

Despite the Budget Act's disdain of auctions for license modification applications, the FCC has proposed to subject 931 MHz applicants to the possibility of auctions for modifications that might not result in substantial changes to their paging systems. The FCC has not suggested imposing a similarly rigid definition of "modifications" upon paging licensees operating on

any frequencies other than 931 MHz, or on licensees of any other mobile services. That is arbitrary, unfair, and apparently contrary to this agency's Congressional mandate.

One of the Budget Act's primary goals is the achievement of "regulatory symmetry" between providers of similar services. See Second Report and Order in GN Docket No. 93-252, FCC 94-31, at ¶ 14 (released March 7, 1994), citing H.R. Rep. 103-213, 103rd Cong., 1st Sess. 494 (1993). The Further Notice does not attempt to explain the reasons for the disparate burdens it proposes to place upon 931 MHz paging licensees.

Metrocall respectfully submits that, if any modification applications are to be considered "auctionable," the category of "auctionable" modifications should be limited to those "so different in kind or so large in scope and scale" as to effectively constitute applications for new services. See Second Auction Order, FCC 94-61 at ¶ 37. "Auctionable" modifications might include applications for a new frequency and applications for new service areas that do not overlap with the licensee's existing service areas. Under such an approach, a licensee seeking to expand and improve its existing services would not be faced with the added costs and extraordinary delays an auction would impose.<sup>3</sup> Metrocall respectfully submits that the public

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<sup>3</sup> If the Commission's auction procedures for narrowband PCS are any indication, the costs and delays inherent in a mobile services auction may be quite substantial. The requirements of upfront payments, minimum opening bids and minimum bid increments would greatly increase the costs of obtaining a modification of license. Such additional costs would have the greatest impact upon smaller service providers who are attempting to expand and



interest in the "rapid deployment of new ... services" would best be served by permitting licensees to make necessary modifications to their existing systems without the additional costs and "administrative delays" that the auction process will entail. See 47 U.S.C. § 309(j)(3).

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improve their systems in order to remain competitive. Thus, the use of auctions for most license modifications may well defeat their intended purpose of "promoting economic opportunity and competition." See 47 U.S.C. § 309(j)(3).

**Conclusion**

A number of the proposals for 931 MHz paging operations contained in the Further Notice that are intended to "streamline" application processing may have the unintended opposite impact on this class of licensees. Metrocall requests that the Commission consider carefully the comments raised by 931 MHz licensees in this proceeding, and craft Rules that will enable 931 MHz licensees to share in the benefits of the Commission's new regulatory regime, without carrying an inordinate amount of the burdens.

Respectfully submitted,

METROCALL, INC.

By

  
Frederick M. Joyce  
Christine McLaughlin

Its attorneys

JOYCE & JACOBS  
2300 M Street, N.W.  
Suite 130  
Washington, DC 20037  
(202) 457-0100

June 20, 1994

**CERTIFICATE OF SERVICE**

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 20th day of June, 1994, copies of the foregoing Comments of Metrocall, Inc. were mailed, postage prepaid, to the following:

Chairman Reed Hundt\*  
Federal Communications Comm.  
Washington, D.C. 20554

Commissioner Andrew C. Barrett\*  
Federal Communications Comm.  
Washington, D.C. 20554

Commissioner Rachelle Chong\*  
Federal Communications Comm.  
Washington, D.C. 20554

A. Richard Metzger, Chief\*  
Common Carrier Bureau  
Federal Communications Comm.  
1919 M Street, N.W.  
Room 500  
Washington, D.C. 20554

Terry L. Fishel, Chief  
Land Mobile Branch  
Federal Communications Comm.  
Route 116  
Gettysburg, PA 17326

John Sherlock, V.P.  
NABER  
1501 Duke Street  
Alexandria, VA 22314

Commissioner James H. Quello\*  
Federal Communications Comm.  
Washington, D.C. 20554

Commissioner Susan Ness\*  
Federal Communications Comm.  
Washington, D.C. 20554

Ralph Haller, Chief\*  
Private Radio Bureau  
Federal Communications Comm.  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

John Cimko, Chief\*  
Mobile Services Division  
Common Carrier Bureau  
Federal Communications Comm.  
1919 M Street, N.W.--Room 644  
Washington, D.C. 20554

Jay Kitchen, President  
NABER  
1501 Duke Street  
Alexandria, VA 22314

Mr. Paul Glist, Esq.  
Matthew P. Zinn, Esq.  
Leonard Communications  
Cole, Raywid & Braverman  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Thomas J. Keller, Esq.  
Michael S. Wroblewski, Esq.  
Association of American Railroads  
Verner, Liipfert, Bernhard,  
McPherson and Hand, Chtd.  
901 15th Street, N.W.  
Washington, D.C. 20005

Stephen L. Goodman, Esq.  
Orbital Communications Corp.  
Halprin, Temple & Goodman  
1100 New York Avenue, N.W.  
Suite 650 East Tower  
Washington, D.C. 20005

Richard R. Zaragoza, Esq.  
David D. Oxenford, Esq.  
Francisco R. Montero, Esq.  
John M. Burgett, Esq.  
Arizona Broadcasters Assoc.,  
Fisher, Wayland, Cooper, Leader &  
Zaragoza  
2001 Pennsylvania Ave., N.W., #400  
Washington, D.C. 20006-1851

Robert B. Kelly, Esq.  
Kelly, Hunter, Mow & Povich, P.C.  
Advanced Mobilcom Technologies  
1133 Connecticut Ave., N.W.  
Washington, D.C. 20036

Lou Gurman, Esq.  
Gurman, Kurtis, Blask & Freedman,  
Chtd.  
Allcity Paging, Inc.  
1400 16th Street, N.W., #500  
Washington, D.C. 20036

Mr. Alan R. Shark, Pres.  
Jill M. Lyon, Esq.  
American Mobile Telecomm Assoc.  
1835 K Street, N.W., Suite 203  
Washington, D.C. 20006

Ms. Mary M. Mann  
National Marine Mfg. Assoc.  
3050 K Street, N.W.  
Suite 145  
Washington, D.C. 20007

Mr. W. T. Adams  
President,  
Radio Technical Comm. for  
Maritime Services  
P.O. Box 19807  
Washington, D.C. 20036

Mr. James R. Balkcom, Jr.  
President & CEO  
Techsonic Industries  
Five Hummingbird Lane  
Eufaula Alabama 36027

John L. Bartlett, Esq.  
Wiley, Rein & Fielding  
Aeronautical Radio, Inc.  
1776 K Street, N.W.  
Washington, D.C. 20006

Ronnie Rand, Esq.  
Wilkes, Artis, Hedrick & Lane  
Association of Public-Safety  
Comm. Officials-Int'l  
1666 K Street, N.W.  
Washington, D.C. 20006

Wayne V. Black, Esq.  
Keller and Heckman  
The American Petroleum Inst.  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

Lon C. Levin, Esq.  
AMSC Subsidiary Corporation  
10802 Park Ridge Blvd.  
Reston, VA 22091

Mr. Carl W. Northrop  
Arch Communications Group, Inc.  
Suite 700  
700 13th Street, N.W.  
Washington, D.C. 20005-3960

John T. Scott, III, Esq.  
The Bell Atlantic Companies  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Lawrence M. Miller, Esq.  
Schwartz, Woods & Miller  
1350 Connecticut Ave., N.W., #300  
Washington, D.C. 20036

Randall B. Lowe, Esq.  
Jones, Day, Reavis & Pogue  
Cencal Communications Corp.  
1450 G Street, N.W.  
Washington, D.C. 20005

Mr. Michael F. Altschul  
Cellular Telecommunications  
Industry Association  
Two Lafayette Centre, Third Floor  
1133 21st Street, N.W.  
Washington, D.C. 20036

Mr. Werner K. Hertenberger  
Dow, Lohnes & Albertson  
Cox Enterprises, Inc.  
1255 23rd Street, Suite 500  
Washington, D.C. 20037

Ms. Kathy L. Shobert  
General Communications, Inc.  
888 16th Street, N.W., Suite 600  
Washington, D.C. 20006

Mr. David A. Reams  
Grand Broadcasting  
Corporation  
P.O. Box 502  
Perrysburg, OH 43552

Rodney L. Joyce, Esq.  
Ginsburg, Feldman & Bress

Michael S. Wroblewski, Esq.  
Verner, Lipfort, Bernhard  
McPherson and Hand, Chtd.  
The Association of American  
Railroads  
901 15th St., N.W., Suite 700  
Washington, D.C. 20005

Mr. William B. Barfield  
Bellsouth  
1155 Peachtree Street, N.W.  
Atlanta, GA 30367-6000

Mr. John D. Lockton  
Corporate Technology Partners  
100 S. Ellsworth Avenue  
San Mateo, CA 94401

Mr. W. Bruce Hanks  
Century Cellunet, Inc.  
100 Century Park Avenue  
Monroe, LA 71203

Mr. Ashton R. Hardy  
Hardy & Carey, L.L.P.  
111 Veterans Boulevard  
Suite 255  
Metairie, LA 70005

Russell H. Fox, Esq.  
Gardner, Carton & Douglas  
E. F. Johnson Company  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

Mr. Michael Hirsch  
Goetek Industries, Inc.  
1200 19th Street, N.W., #607  
Washington, D.C. 20036

Ms. Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

David L. Nace, Esq.  
Lukas, McGowan, Nace &

In-Flight Phone Corp.  
1250 Connecticut Ave., N.W.  
Washington, D.C. 20036

Mr. Mark E. Crosby  
Industrial Telecommunications  
Association, Inc.  
1100 N. Glebe Road, Suite 500  
Arlington, VA 22201-5720

Shirley S. Fujimoto, Esq.  
Keller & Heckman  
Lower Colorado River  
Authority  
1001 G Street, N.W., #500 West  
Washington, D.C. 20001

Marla Spindel, Esq.  
Paging Network, Inc.  
Reed, Smith, Shaw & McClay  
1200 18th St., N.W.  
Washington, D.C. 20036

Ms. Ellen L. Levine  
State of California  
505 Van Ness Avenue, Rm 5028  
San Francisco, CA 94102

Mr. Daryl L. Avery  
Public Service Commission of  
The District of Columbia  
450 Fifth Street, N.W.  
Washington, D.C. 20001

Mr. Michael R. Bennett  
Rig Telephones, Inc.  
Keller and Heckman  
1001 G Street, N.W., #500 West  
Washington, D.C. 20004

William J. Franklin, Esq.  
William J. Franklin, Chtd.  
Pennsylvania Ave., N.W., #300  
Washington, D.C. 20006

Ms. Linda C. Sadler  
Rockwell International Corp.  
1745 Jefferson Davis Highway  
Arlington, VA 22202

Gutierrez, Chtd.  
Liberty Cellular, Inc.  
1819 H Street, N.W., 7th Fl.  
Washington, D.C. 20006

Phillip L. Spector, Esq.  
Pagemart, Inc.  
Paul, Weiss, Rifkind, Wharton  
& Garrison  
1615 L Street, N.W., #1300  
Washington, D.C. 20036

Mr. Corwin D. Moore, Jr.  
Personal Radio Steering Group  
P.O. Box 2851  
Ann Arbor, MI 48106

Robert F. Aldrich, Esq.  
PTC Cellular  
Keck, Mahin & Cate  
1201 New York Avenue, N.W.  
Washington, D.C. 20005-3919

Anne P. Jones, Esq.  
Pactel Corporation  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Mr. Terrence P. McGarthy  
Telmarc Telecommunications,  
Inc.  
24 Woodbine Road  
Florham Park, NJ 07932

Daniel S. Goldberg, Esq.  
RAM Mobile Data USA Limited  
Goldberg, Godles et al.  
1229 Nineteenth Street, N.W.  
Washington, D.C. 20036

Mr. Michael J. Shortley, III  
Rochester Telephone Corp. 1919  
180 South Clinton Avenue  
Rochester, NY 14646

Mr. David L. Jones  
Rural Cellular Association  
2120 L Street, N.W., #810  
Washington, D.C. 20037

Ms. Paula J. Fulks  
Southwestern Bell Corporation  
175 E. Houston, Room 1218  
San Antonio, TX 78205

Judith S. Ledger-Roty, Esq.  
Reed, Smith, Shaw & McClay  
1200 18th Street, N.W.  
Washington, D.C. 20036

Raul R. Rodriguez, Esq.  
Starsys Global Positioning, Inc.  
Leventhal, Senter & Lerman  
2000 K Street, N.W., #600  
Washington, D.C. 20006

Mr. Jay C. Keithley  
Sprint Corporation  
1850 M Street, N.W., #1100  
Washington, D.C. 20036

Mark Golden, Esq.  
Telocator, The Personal Communi-  
cations Industry  
1019 19th Street, N.W., #1100  
Washington, D.C. 20036

George Y. Wheeler, Esq.  
Telephone and Data Systems  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Stuart F. Feldstein, Esq.  
Time Warner Telecommunications  
Fleischam & Walsh  
1400 Sixteenth St., N.W.  
Washington, D.C. 20036

Stephen D. Baruch, Esq.  
TRW, Inc.  
Leventhal, Senter & Lerman  
2000 K Street, N.W., #600  
Washington, D.C. 20006

Ms. Linda Kent  
United States Telephone Assoc.  
900 19th Street, N.W., #800  
Washington, D.C. 20006-2105

Mr. Jeffrey L. Sheldon  
Utilities Telecommunications  
Council  
1140 Connecticut Avenue, N.W.,  
Suite 1140  
Washington, D.C. 20030

Michael D. Basile, Esq.  
Vanguard Cellular Systems, Inc.  
Dow, Lohnes & Albertson  
1255 Twenty-Third St., N.W.  
Suite 500  
Washington, D.C. 20037

Mr. Jeffrey S. Borks  
US West, Inc.  
1020 19th Street, N.W., #700  
Washington, D.C. 20036

Martin W. Bercovici, Esq.  
Waterway Communications Sys. Inc.  
Keller & Heckman  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001



Glenda Sumpter  
\* Hand Delivery